

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

FARHAN MOHAMOUD TANI WARFAA, . Civil Action No. 1:05cv701  
Plaintiff, .  
vs. . Alexandria, Virginia  
YUSUF ABDI ALI, . June 4, 2018  
Defendant. . 10:58 a.m.  
. . . . .

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE LEONIE M. BRINKEMA  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: LINDSAY R. BARNES, III, ESQ.  
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and  
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 P R O C E E D I N G S

2 THE CLERK: Civil Action 05-701, Farhan Mohamoud Tani  
3 Warfaa v. Yusuf Abdi Ali. Would counsel please note their  
4 appearances for the record.

5 MR. BARNES: Good morning, Your Honor. Lindsay  
6 Barnes. I'm from the law firm of DLA Piper. I represent the  
7 plaintiff, Mr. Warfaa. I'm here today with my colleagues, Ben  
8 Klein, also from DLA Piper; and Kathy Roberts from the Center  
9 for Justice & Accountability, both of whom have been admitted  
10 pro hac.

11 THE COURT: All right. And, Mr. Drennan, you're here  
12 for the defendant?

13 MR. DRENNAN: Yes, Your Honor. Joseph Peter Drennan  
14 on behalf of the defendant.

15 THE COURT: All right. Well, actually, there's more  
16 than one plaintiff involved in this case, is there not, or is  
17 it just now Mr. Warfaa?

18 MR. BARNES: Just Mr. Warfaa, Your Honor.

19 THE COURT: Just one plaintiff, all right. Well, you  
20 know, obviously, I'm hoping that you-all have talked about the  
21 status of things. This case has certainly been on the docket a  
22 long time.

23 As you know, it was -- we deferred a lot of this case  
24 to see how the *Samantar* matter worked out. The *Samantar* matter  
25 is, as I understand it, completely resolved at this point, so

1 the question is where is this case? Mr. Warfaa first of all is  
2 in this country; is that correct?

3 MR. BARNES: Mr. Warfaa is not in this country.

4 THE COURT: At the lectern, please.

5 MR. BARNES: Thank you.

6 THE COURT: All right. He is not here?

7 MR. BARNES: No.

8 THE COURT: He's back in Somalia?

9 MR. BARNES: That's correct, Your Honor.

10 THE COURT: All right. Mr. Ali is in this country,  
11 Mr. Drennan?

12 MR. DRENNAN: He is indeed, Your Honor.

13 THE COURT: All right. How is your client employed?

14 MR. DRENNAN: At the present time, he's not --

15 THE COURT: Can you just be right there?

16 MR. DRENNAN: Oh, I'm sorry, Your Honor. At the  
17 present time, he's not employed, Your Honor. He was employed  
18 with a government contractor until last year. CNN ran a story  
19 on this matter with some inflammatory coverage of his being  
20 employed at Dulles Airport, and he lost his job, but he's, he's  
21 presently supported by family and living in the area.

22 THE COURT: All right. Well, we need to get this  
23 case resolved one way or the other. I mean, in some cases,  
24 these cases have been resolved through a settlement.  
25 Otherwise, we need to litigate them.

1           So have you talked between yourselves as to how you  
2 want to proceed at this time?

3           MR. BARNES: We have, Your Honor.

4           THE COURT: All right.

5           MR. BARNES: We are ready for the case to proceed and  
6 for the stay to be lifted. There are just a few things, if I  
7 may, that I'd like to bring to Your Honor's attention.

8           THE COURT: All right.

9           MR. BARNES: The first thing is that we would like  
10 the Court to open discovery -- to wait to open discovery until  
11 Friday, June 15. As Your Honor may be aware, we're in the holy  
12 month of Ramadan. Practically speaking, we're not going to be  
13 able to conduct any discovery until the end of Ramadan.

14           Our client is Muslim. Most of the witnesses in this  
15 case are Muslim. So we would ask you to wait nine days before  
16 opening discovery.

17           THE COURT: Go ahead.

18           MR. BARNES: Secondly, we would like an extended  
19 discovery period. Given the international component of this  
20 case and given that it's going to take a little time for the  
21 Department of Homeland Security to parole our client into the  
22 country, we're asking --

23           THE COURT: Wait. Do you think that's going to  
24 happen? I have told you I've got some of these other cases  
25 with people from this part of the world, and they're not

1 getting into the country.

2 MR. BARNES: We do believe that that's going to  
3 happen, Your Honor. We've been in touch with the Department of  
4 Homeland Security. They're aware of this matter, and they're  
5 aware of our client's need to be here for that matter, so we've  
6 been in touch with them.

7 We, we anticipate that our client will be able to be  
8 paroled into this country between one to three months. We're  
9 proposing a discovery period of 120 days, with the caveat that  
10 if it appears that the Department of Homeland Security is going  
11 to take longer with their process, we'll move for an extension  
12 at that time.

13 THE COURT: All right. What else?

14 MR. BARNES: Finally, we wanted to let Your Honor  
15 know that we would be filing a consent motion to file an  
16 amended -- motion for leave to file an amended complaint. This  
17 would be the second amended complaint, Your Honor.

18 We have a redline version if you'd like to see the  
19 changes that we're going to make, and we will be attaching the  
20 second amended complaint to our motion. We're aiming to do, as  
21 you'll see, Your Honor, two things. We're fixing some  
22 typographical and translation errors, and we're also stripping  
23 out the claims and the material relating to the claims brought  
24 under the Alien Tort Statute that Your Honor has already  
25 dismissed. We're just trying to make sure that we have the

1 cleanest, most focused, most straightforward version of the  
2 complaint for the fact finder.

3 THE COURT: All right. Mr. Drennan, since counsel  
4 described that as a consent motion, am I -- do I understand  
5 that you're not opposing the filing of the second amended  
6 complaint?

7 MR. DRENNAN: No, Your Honor. The representations  
8 made are correct. Essentially, I've looked at the redline  
9 version, and it appears to be basically an amendment, as  
10 counsel indicates, to remove the ATA, Alien Tort -- or ATS  
11 claims from the amended complaint, and the rest of the matter  
12 is, is essentially stylistic and immaterial, I think, so I'm  
13 not opposed to that motion.

14 THE COURT: All right. Now, in terms of any legal  
15 issues, most of the legal issues, I would assume, that were  
16 applied in the *Samantar* case would apply to this case other  
17 than perhaps the actual status of your client and how that  
18 might relate to some of the issues, but other than that, are  
19 there any other actually significant legal issues that may  
20 differ from *Samantar*?

21 MR. DRENNAN: Well, Your Honor, there's certainly  
22 some similarity. I mean, we have, we have pled earlier in this  
23 case or raised issues about the, the statute of limitations  
24 because of the untimeliness of the action having been brought,  
25 and there were equitable tolling arguments that were raised by

1 the other side.

2 Those, those sorts of arguments were raised in the  
3 *Samantar* case, Your Honor may recall having dealt with them,  
4 but there -- whereas *Samantar* was in Italy, my client was in  
5 Toronto. We had many, many years ago, in fact, well over a  
6 decade ago engaged an expert to opine about whether  
7 Mr. *Samantar* could have been sued in Toronto. So that's an  
8 issue, a potential issue.

9 As -- Your Honor had inquired about the presence of  
10 the defendant here in the -- or the nonpresence of the  
11 defendant here. We have insisted earlier in the case that  
12 we -- if the case is to go forward, that we have the  
13 prerogative of deposing the defendant in this district, as is  
14 our right under the rules.

15 THE COURT: Defendant or the plaintiff?

16 MR. DRENNAN: Or the plaintiff, rather. I'm sorry,  
17 Your Honor, I misspoke. The plaintiff, rather. To depose the  
18 plaintiff in this, in this district.

19 So the -- when we hear that the plaintiff is not here  
20 but presumably will be here, paroled in at some point within  
21 the next 120 days so that we can depose him, we don't have a  
22 problem with that, but we don't want to, to have the door  
23 opened to endless discovery or to have this matter statted  
24 again for a long period of time.

25 THE COURT: Well, that's not going to happen. I

1 mean, this case needs to be resolved. Frankly, we should have  
2 gotten it back on the docket sooner. *Samantar* has been over  
3 for some time and --

4 MR. DRENNAN: Yes. And this matter was up on a cert  
5 petition and a cross-cert petition to the Supreme Court that  
6 was, that was rejected, I believe, just about a year ago.

7 THE COURT: Right.

8 MR. DRENNAN: So -- and the Court knows well our  
9 feelings about the -- or our standing with -- or stance,  
10 rather, with regard to some of the legal issues in the case,  
11 but Your Honor and, indeed, the Fourth Circuit have disagreed  
12 with us.

13 THE COURT: All right.

14 MR. DRENNAN: So as long as the State Department or  
15 the federal government has not weighed in and asked that the  
16 case be dismissed, I think we're, we're kind of constrained to  
17 have to go forward, but --

18 THE COURT: Mr. Davis, have a seat. We don't have  
19 two attorneys standing.

20 MR. DRENNAN: But the -- another, another issue, Your  
21 Honor, that we believe should -- if the Court is inclined to,  
22 to reopen discovery and set time limits, 120 days, we're not  
23 opposed to that. The, the only proviso in that regard would be  
24 that recognition should be taken of the fact that plaintiff in  
25 this -- or strike that.



1           The defendant in this case, Mr. Ali, has already been  
2       deposed. He was deposed in the spring of 2005, and when --  
3       during one of those intervals over the years when the Court  
4       entered the stay, and I think it was in the aftermath of the  
5       *Kiobel* decision, the matter was referred to Magistrate Judge  
6       Anderson, and at that initial conference there, the -- Judge  
7       Anderson indicated that Mr. Ali shouldn't have to be re-deposed  
8       if he was already deposed in the case.

9           So we would oppose him being re-deposed.

10          THE COURT: Well, look, that's not before me right  
11       now. The reality of it is I would not permit and I know Judge  
12       Anderson would not permit repetitious questioning. However,  
13       you know, this case is from the plaintiff's standpoint  
14       partially about getting some kind of compensation for the  
15       damages he claims he suffered as a result of your client's  
16       conduct, and as a result, I think the financial situation of  
17       your client over the past 10 or 12 years would certainly be  
18       relevant.

19          MR. DRENNAN: Sure.

20          THE COURT: Now, whether that could be handled  
21       through interrogatories rather than deposition, I don't know.  
22       I certainly -- and I will talk to Judge Anderson about this  
23       case as well. It's in neither side's interests to  
24       unnecessarily incur transaction costs.

25          The reality of this case is, you know, the plaintiff

1 may get a symbolic victory if he gets a judgment in his favor,  
2 but in terms of actual dollars that might compensate him for  
3 the injuries he's alleged, there may not be much there, and  
4 that's a practical matter that plaintiff's counsel need to  
5 think about.

6           You and your client need to think about, I mean, I  
7 assume you're not doing this pro bono, maybe you are --

8           MR. DRENNAN: No.

9           THE COURT: -- but it's costing him some money.

10           So, you know, I don't know what his financial  
11 situation is, and that would include, you know, whether he has  
12 family resources. I mean, if he's been responsible in part for  
13 horrible injuries to this plaintiff, then there's at least a  
14 moral if not a legal obligation to make compensation, and I  
15 don't know whether, you know, either side is interested in  
16 trying to work this case out.

17           In the *Samantar* case, did any of the plaintiffs get  
18 any compensation?

19           MR. DRENNAN: Nary a cent, Your Honor.

20           THE COURT: Yeah. And so the only people who  
21 benefited from it, frankly, were the attorneys who may have  
22 gotten some fees. I know the plaintiffs are doing it pro bono,  
23 and again, there are important principles in a case like this,  
24 but the reality of it from an individual plaintiff's standpoint  
25 is, you know, why go to all this trouble and why do all this

1 litigation if you're coming out with nothing?

2 So that's a way of teeing this case up for both sides  
3 thinking pragmatically about whether there's some way of  
4 resolving this case. If your client is paying you money to  
5 represent him, that money could go to this plaintiff.

6 And I don't know, you know, I don't have any idea  
7 what Mr. Warfaa's situation is, but usually an American dollar  
8 goes a lot further in some of those countries, and so what  
9 might not look like a big judgment, I mean, getting \$1 million  
10 and not being able to collect a penny on it is not as valuable  
11 as getting, say, \$50,000 and be able to collect it, and I would  
12 hope that plaintiff's counsel, you know, would think about the  
13 plaintiff as a, as a person who may be in need for whom  
14 immediate compensation could be much more valuable than more  
15 months or years of litigation, because if it's anything like  
16 the *Samantar* case, it did ultimately go to trial. There was a  
17 multi-million-dollar verdict, as I recall.

18 MR. DRENNAN: By default.

19 THE COURT: It was by default.

20 MR. DRENNAN: Yes.

21 THE COURT: And then there were still rounds of  
22 appeals after that, as I recall, or did that end with just --

23 MR. DRENNAN: That all, that all preceded the trial.

24 THE COURT: All right. I mean, there were so many  
25 rounds --

1 MR. DRENNAN: For the most part.

2 THE COURT: Yeah.

3 MR. DRENNAN: Oh, no, wait, I take that back. I  
4 stand corrected. There, there was actually an argument before  
5 the Fourth Circuit that was -- or an appeal before the Fourth  
6 Circuit that was pending at the time of the, of the Court's  
7 having the --

8 THE COURT: Yeah. That was the immunity issue, I  
9 think.

10 MR. DRENNAN: The immunity issue was still, was still  
11 in the Fourth Circuit and was, was ultimately -- we ultimately  
12 lost there, and we, we attempted to petition for -- we  
13 petitioned for cert there, and the Supreme Court declined to  
14 take it.

15 THE COURT: All right. So anyway, having said that,  
16 I'm going to go ahead, we will issue our standard scheduling  
17 order on June 15. That does, in fact, have between 120 and 140  
18 days. It depends a little on how the calendar works.

19 So you're going to get the discovery time period that  
20 you were requesting. You will find that's our standard  
21 scheduling order, that it's going to call for your -- you and  
22 Mr. Drennan getting together before Judge Anderson with your  
23 proposed discovery plan, but again, he will also probably talk  
24 to you about whether it makes some sense to try to see if you  
25 can settle this case, all right?

1 MR. DRENNAN: All right, Your Honor.

2 MR. BARNES: Yes, Your Honor.

3 THE COURT: All right. So we're back on the  
4 docket -- on the calendar. I'll issue an order that removes  
5 the stay, gets things going, and you'll get the scheduling  
6 order on the 15th of June.

7 MR. DRENNAN: All right. Thank you, Your Honor.

8 THE COURT: All right?

9 MR. DRENNAN: Your Honor, one last matter,  
10 housekeeping matter, and I -- this is an item that we have  
11 discussed, and that is, that we would just request that the  
12 date for the pretrial be after the 1st of November. That's  
13 all. I don't know how that -- I'm trying to do my mental  
14 arithmetic here concerning the time frame for discovery, and  
15 the reason for that is I have some, some family plans in  
16 mid-October. I have a daughter that lives abroad that I go to  
17 see a couple times a year.

18 THE COURT: And you said after November what?

19 MR. DRENNAN: Anytime after November 1.

20 THE COURT: All right. I'll make sure we look at  
21 that, all right?

22 MR. DRENNAN: Thank you, Your Honor.

23 THE COURT: Anything further on this case? No?

24 MR. BARNES: No, Your Honor.

25 THE COURT: Then you're all free to go.

1 MR. BARNES: Thank you, Your Honor.

2 (Which were all the proceedings  
3 had at this time.)

4  
5 CERTIFICATE OF THE REPORTER

6 I certify that the foregoing is a correct transcript of  
7 the record of proceedings in the above-entitled matter.

8  
9  
10 /s/

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Anneliese J. Thomson  
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